

## **COEXISTENCE AND SETTLEMENT AGREEMENT**

This Co-Existence Settlement Agreement (“Agreement”) is entered into this 8<sup>th</sup> day of, November 2017 (the “Effective Date”), by and between TEXAS CHICKEN & BURGERS, LLC, a New York limited liability company with a principal place of business at 222-11 39th Street, Bayside, New York 11361 (hereinafter, “TC&B”), and NORTHERN FRIED CHICKEN & BURGERS INC., a New York domestic business corporation with a principal place of business at 104-02 Northern Boulevard, Corona, New York 11368, (hereinafter, “Northern”), and one or both parties may be referenced herein as a “Party” or “Parties.”

### **BACKGROUND**

TC&B is the owner of certain intellectual property (as more fully defined herein) which is used by the owners and operators of over twenty (20) TC&B-branded (the “Brand”) fast casual restaurants throughout New York City and Philadelphia, which commenced operations under the Brand at its first locations in New York City on or about January 1, 2015. TC&B, in connection with its operation, has certain intellectual property rights established through its use of the Texas Chicken & Burgers colors, décor, logo and word mark for certain goods and services (the “TC&B IP”). TC&B initiated a federal lawsuit against Northern, namely *TEXAS CHICKEN & BURGERS, LLC v. NORTHERN FRIED CHICKEN & BURGERS INC.*, Civil Action Number Case No. 1:17-cv-01308, in the United States District Court, Eastern District of New York (the “Lawsuit”); and

WHEREAS, TC&B and NORTHERN wish to dismiss the Lawsuit and resolve their dispute amicably, respect TC&B’s IP and allow the Parties to provide their respective goods and services in accordance with the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Co-Existence

1.1 The Parties hereby acknowledge and agree that in accordance with the terms and conditions set forth herein, TC&B and NORTHERN can co-exist in the marketplace without consumer confusion per the terms of this Agreement. The Parties acknowledge and agree that co-existence is possible given NORTHERN's agreement to refrain from infringing uses of TC&B's colors and décor, and to use the agreed upon colors and décor displayed on Exhibit A (the "Colors and Décor"), thus the Parties' respective marks for goods and services are sufficiently dissimilar, such that consumer confusion is unlikely.

1.2 In the event that either Party becomes aware of any actual instances of confusion, the Parties will cooperate with each other and use their best efforts to negate such confusion and avoid any future confusion.

2. Obligations. NORTHERN agrees that it will cease all use of its current colors and décor attached hereto as Exhibit B (the "Current Colors and Décor") claimed in the Lawsuit, including but not limited to all use of the current colors and décor on all storefronts, interior walls, signage, websites, advertising, packaging, menus and social media within twenty (20) business days from the execution of this Agreement, and will only use the agreed upon Colors and Décor as set forth in Exhibit A. In the event that NORTHERN wants to use a different color and/or décor other than the Colors and Décor set forth in Exhibit A, NORTHERN shall present any such proposed colors and/or décor to TC&B for written approval, which shall not be unreasonably withheld and shall be responded to (with reasoning if withheld) within sixty (60) calendar days of any such request, and if not responded to within such time, it shall be deemed approved.

3. Further Assurances. From time to time, and at the reasonable request of one Party, the other Party, without further consideration, shall execute and deliver such documents or take such action as the requesting Party may reasonably request in order to give full effect to the terms and conditions of this Agreement.

4. General Provisions.

4.1 TC&B hereby forever releases, waives and discharges NORTHERN and its past and present directors, officers, employees and agents from any and all claims, actions, damages, liabilities or obligations of any kind, whether at law or in equity, whether in contract or tort by statute or on any other basis, which TC&B may have, or has had as of the Effective Date relating to or in any way arising out of use of NORTHERN's colors and décor, and other claims in the Lawsuit.

4.2 NORTHERN hereby forever releases, waives and discharges TC&B and its past and present directors, officers, employees and agents from any and all claims, actions, damages, liabilities or obligations of any kind, whether at law or in equity, whether in contract or tort or by statute or on any other basis, which NORTHERN may have, or has had as of the Effective Date relating to or in any way arising out of use of the colors and décor by TC&B.

4.3 Upon any material breach or default of this Agreement by either Party, the non-breaching Party has the right to terminate this Agreement if the breaching Party fails to cure such material breach or default within thirty (30) days of written notice from the non-breaching Party.

4.4 This Agreement may be immediately terminated by either Party, if the other Party ceases doing business as a going concern.

4.5 All notices, approvals or other communications required or permitted under this Agreement, will be sent both in writing by overnight mail, facsimile, courier or registered mail with postage prepaid, to the address specified below or to any other address that may be designated by either Party by prior notice. All notices must be submitted simultaneously by email. Any notice or other communication delivered by overnight mail or facsimile will be deemed to have been received the first business day it was sent. Any notice or other communication sent by overnight courier will be deemed to have been received on the third business day after its date of posting. Any notice or other communication sent by registered mail will be deemed to have been received on the third business day after its date of posting:

If to NORTHERN:	If to TC&B:
<p>Northern Fried Chicken &amp; Burgers Inc. 104-02 Northern Boulevard Corona, New York 11368</p> <p>with copy to:</p> <p>Satish K. Bhatia Bhatia &amp; Associates PLLC 28 West 32nd Street, Suite 1511 New York, New York 10001 <a href="mailto:satishbhatiaus@yahoo.com">satishbhatiaus@yahoo.com</a></p>	<p>Texas Chicken &amp; Burgers, LLC PO Box 610431 Bayside, NY 11361 ATTN: Waheed Khosdal <a href="mailto:info@texaschickenandburgers.com">info@texaschickenandburgers.com</a></p> <p>with copy to:</p> <p>Cliff Schneider Cohen Schneider LLP 275 Madison Avenue, Suite 1905 New York, New York 10016 <a href="mailto:cschneider@cohenschneider.com">cschneider@cohenschneider.com</a></p>

4.6 This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York excluding any conflict of law principles. The court that presides over the Lawsuit shall retain jurisdiction to enforce this Agreement.

4.7 In any such action, both Parties submit to personal and subject matter jurisdiction of such courts, and waive any objections to venue for such courts.

4.8 It is expressly agreed that a material breach of this Agreement by either Party may cause irreparable harm to the other Party and that a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, each Party shall be entitled to seek injunctive relief against the other Party in the event of any threatened or actual violation of any or all provisions in this Agreement.

4.9 This Agreement is binding upon and inures to the benefit of the Parties, their successors, transferees, licensees, and assignees of their respective marks.

4.10 This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to herein, and supersedes any and all other agreements, understandings, negotiations or discussions, either oral or in writing, express or implied, between the Parties to the same. No other representations, covenants, undertakings, or other prior or

contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties. This Agreement shall not be modified, amended, varied or supplemented except by a writing of subsequent or even-date executed by authorized representatives of the Parties.

4.11 Except as required by law or as necessary or appropriate for the enforcement of this Agreement, the Parties, including their past and present predecessors, successors, affiliates, subsidiaries, parents, insurers, officers, directors, employees, assigns, agents and attorneys, shall keep the terms of this Agreement confidential and shall not disclose, divulge, publish, broadcast, disseminate, send or file copies of the Agreement, or otherwise communicate the terms of this Agreement to others orally or in writing, or use it for any purpose, except pursuant to, and in order to carry out, the terms and objectives of this Agreement. Neither Party shall make any announcement or press release regarding this Agreement or any of its terms without the other Party's prior written consent. Except as expressly permitted by this Agreement, neither Party shall use the name of the other Party or any of its employees nor any adaptation in any advertising, promotion or sales literature without the prior written consent of the other Party. Each Party agrees to exercise every reasonable precaution to prevent and restrain the unauthorized disclosure of the terms by any of its directors, officers, employees, consultants, subcontractors, or agents.

4.12 Each Party will bear its own costs and expenses, including attorneys' fees, in the Lawsuit and in all other matters relating to this Agreement.

4.13 The invalidity, illegality, and unenforceability of any provision of this Agreement shall not in any way affect, impair, invalidate or render unenforceable this or any other provision hereof, and any such invalid, illegal or unenforceable provision shall be regarded as severed from this Agreement.

4.14 Any modification of this Agreement shall be made in a written document, signed by both Parties.

4.15 The Parties participated jointly in the preparation of this Agreement. Each Party to this Agreement has had the opportunity to review, comment upon and redraft this Agreement. It is agreed that no rule of construction shall apply against any Party or in favor of any Party.


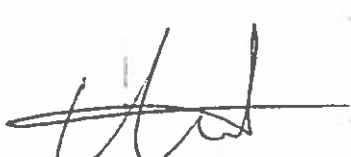
4.16 The failure of either Party to assert a right under this Agreement or to insist upon compliance with any term of condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party. Any waiver of any kind by a Party must be in writing, shall be effective only to the extent set forth in writing, and shall not operate or be construed as a waiver of any subsequent breach.

4.17 This Agreement effects a settlement of claims which are contested and denied. Nothing in this Agreement shall be construed as an admission of any liability or wrongdoing of any kind with respect to the matters related to this controversy.

4.18 The Parties represent and warrant that their undersigned representatives each have the capacity to enter into this Agreement.

5. Dismissal of Lawsuit. In consideration of the terms and conditions set forth herein, the Parties shall dismiss the Lawsuit by filing a Stipulation of Dismissal with Prejudice, in the form attached hereto as Exhibit C, within three (3) business days after the Effective Date.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date stated above.

NORTHERN FRIED CHICKEN & BURGERS, INC.	TEXAS CHICKEN & BURGERS, LLC
By: 	By: 
Name: <u>Richard Javid</u>	Name: <u>Waheed Khosla</u>
Title: <u>OWNER</u>	Title: <u>Operator</u>

{00031970;2}

**EXHIBIT A**

**COLORS AND DÉCOR AGREED UPON FOR USE BY NORTHERN**

- Northern's Canopy shall be in Chocolate; and
- Background of the store shall be in Orange



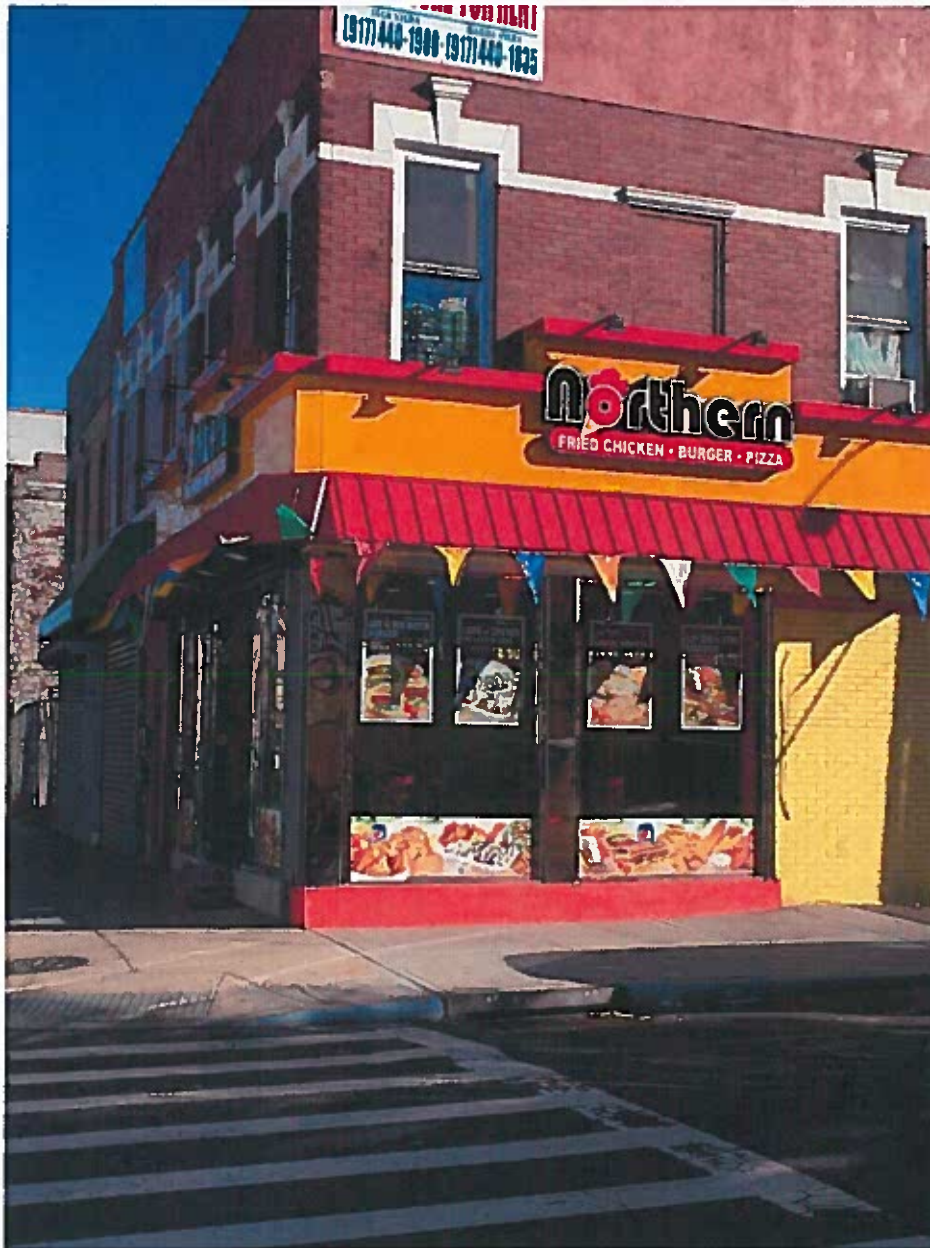
**EXHIBIT B**

**CURRENT COLORS AND DÉCOR**

(red and yellow canopy and background substantially similar to TC&B standard décor )







**EXHIBIT C**

**ORDER OF DISMISSAL**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

TEXAS CHICKEN & BURGERS, LLC,	)	
	)	
	)	
	)	
Plaintiff,	)	Case No. 1:17-cv-01308(ARR)
	)	
v.	)	
	)	
NORTHERN FRIED CHICKEN &	)	
BURGERS INC.,	)	
	)	
Defendants.	)	

**ORDER OF DISMISSAL**

This Court being fully advised that the parties in the above-captioned matter have entered into the Co-Existence and Settlement Agreement attached hereto; and

This Court being further advised that the Parties have consented to this Order of Dismissal;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

- (a) All of the provisions of the Co-Existence and Settlement Agreement attached hereto are incorporated herein as the Order of this Court;
- (b) All claims and counterclaims in this action are hereby dismissed with prejudice;

- (c) The Court expressly retains jurisdiction over this case and over the parties for the purpose of enforcing and ensuring compliance with the terms of the Co-Existence and Settlement Agreement; and
- (d) Each party shall pay its own costs, attorneys' fees and expenses incurred in this matter.

SO ORDERED, this \_\_\_\_ day of November 2017

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The Honorable Cheryl M. Pollack  
United States District Judge  
Eastern District of New York

STIPULATED AND AGREED:

COHEN SCHNEIDER LLP

/s/ Cliff S. Schneider

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